Nova Law Review

Volume 1, *Issue* 1 1977 *Article* 3

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Abstract

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KEYWORDS: pathway, justice, future

Pathways for Future Justice*

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Our judicial system is said to be in a state of crisis. Courts across the entire United States are being asked to absorb increased court work; the judiciary is losing its attractiveness for outstanding lawyers; and the public continues to be uninformed about the legal system. On the one hand, many are turning to the courts as the only branch of government available to solve many new types of actions, a number of which could be resolved by either the legislative or the executive branches of our government. On the other hand, "we hear . . . [that the courts are really not properly resolving the matters brought to them, they] protect only the rich and the powerful, that justice is on the side of the best lawyer, and that delays and technicalities make the fair administration of justice impossible."[1] It is exceedingly important that we develop ways to overcome this explosion in legal proceedings and current lack of confidence in our system.

There are three major problems facing our judicial system: first, the inability of the courts to resolve all the disputes that are being submitted to them; second, the problem of the future quality of the judiciary; and third, the individual citizen's lack of familiarity with our judicial system.

NEW PROBLEMS FOR OUR COURTS

A new era has begun in our judicial system. It is a time when the courts are being asked to resolve more and more disputes and to accept many types of new matters for resolution. In Florida, for example, the Supreme Court and the District Courts of Appeal disposed of as many cases in the first six months of 1976 as they did in the entire year of 1972 (see Table 1).

*This article was adapted from an address delivered before the League of Women Voters, Tampa, December 2, 1976.

1. Heflin, *Can the Rule of Law Survive?* 58 J. AM. JUD. SOC'Y 368 (1975).

Table 1. COMPARISON OF 1972 AND 1976 CASE LOADS, SUPREME COURT OF FLORIDA AND DISTRICT COURTS OF APPEAL

	1972		*1976 (first half)*	
	New Cases	*Disposed of Cases*	*New Cases*	*Disposed of Cases*
Supreme Court	1,288	1,229	1,141	1,363
First District Court of Appeal	994	922	959	1,101
Second District Court of Appeal	1,063	895	1,063	928
Third District Court of Appeal	1,523	1,521	1,238	1,056
Fourth District Court of Appeal	1,233	1,068	1,372	1,105

Source: Administrative Records of the Supreme Court of Florida, Office of the Clerk.

There are many reasons for the multiplying case loads of Florida's courts. Population growth has certainly contributed to the increase. It should be noted, however, that the courts in areas of the country with relatively stable population have also experienced these increases. The factors largely responsible for this increase include the following: (1) new theories in the law evolving from consumer and environmental actions; (2) the expanded use of old theories, such as in malpractice and other tort actions; (3) a substantial increase in new legislation both by Congress and state legislatures, which places the burden of construction on the courts; (4) new regulatory legislation, which requires a review within at least the appellate courts; and (5) the increase in crime and the changes in criminal procedural requirements which have joined to increase the criminal case load.

This increase in legal proceedings, however, is just beginning. In the future, citizens will make even greater use of lawyers and the courts. Prepaid and group legal services will be the principal reason.[2] These programs, which are a kind of Blue Cross-Blue Shield for legal services,

2. *See generally* Cornish & Cornish, *Group Legal Services Today*, 14 WASHBURN L.J. 31 (1975); Wilcox & Schneider, *Prepaid Legal Services and the Code of Professional Responsibility*, 36 OHIO ST. L.J. 761 (1975); Young, *Group Legal Services and Canon II*, 34 MD. L. REV. 541 (1974).

gained momentum in 1973 when Congress amended the Taft-Hartley Act to allow unions to negotiate for employer contributions to fund legal services for employees.[3] Labor unions, however, are not the only prepaid legal service groups now operating. Other organizations now establishing such groups include credit unions and other cooperative-type associations. At present, prepaid legal service groups have been formed in Dade, Orange, and Escambia counties,[4] and nationwide there are four thousand such groups.[5] Within the next ten years, a substantial number of family units in the United States should be covered by some form of prepaid or group legal services.

The question of how the court system can absorb additional work resulting from increased availability of legal services is now timely. Priorities must be set to determine how additional court proceedings can be handled. The courts must be responsive to the needs of both the public in general and the individual litigant in particular.

Courts are attempting to cope with increased case loads by more efficiently resolving the cases now before them and by developing methods to resolve certain matters outside the court system without judicial labor. Florida is a leader in this area. At present, Florida has adopted four innovative approaches to relieve the case loads of our courts in certain problem areas. First, traffic offenses have been decriminalized;[6] this has reduced our judicial labor in traffic court cases by at least 66 per cent.[7] Second, pilot programs have been established for Citizens Dispute Councils in Broward, Dade, and Duval counties. This program allows minor criminal offenses to be resolved without invoking all the requirements of the criminal justice system. Third, a pretrial diversion program has been organized in most circuits of this state.[8] This program allows prosecutors the discretion to approve a conditional probation at

3. Labor-Management Relations Act (Taft-Hartley Act), 29 U.S.C. § 186(c) (1973).

4. Florida Integration Rule, art. XIX, as amended on April 30, 1976, to allow attorney participation in Bar-approved group legal services. Nine new plans for such services have been submitted to the Bar for approval.

5. Murphy, *A Vision of the Future*, 11 TRIAL 12, 13 (1975).

6. Florida Uniform Disposition of Traffic Infractions Act, Ch. 318, Fla. Stat. (1975).

7. Judicial Council of Florida, Twenty-First Annual Report, Schedule E, at 53 (approximately 66 per cent of the traffic infractions disposed of between January and June of 1975 required no hearing at all). The informal assessments reported to me by the chief judges of circuit courts support this estimate of the reduction in the judicial workload.

8. § 944.025, Fla. Stat. (1975).

an initial stage in the criminal justice proceedings, thereby eliminating labors ordinarily expended by prosecutors, public defenders, and judicial officers in carrying a defendant, who would eventually be put on probation anyway, completely through the criminal justice system. Fourth, some circuits in this state have appointed an administrator to attempt conciliation of child support disputes, thereby avoiding unnecessary judicial hearings.[9]

These programs are a good start, but much remains to be done. For example, there must be improved communications between lawyers to ensure that judicial time is not wasted and that the court's calendar is not used as a trial tactic. There must be improvements in summary claims proceedings to make them more usable by the individual citizen without his having to resort to more formal legal proceedings and representation by an attorney. The State must also improve its appellate structure. A new proposal to that end seeks to solve the troublesome problem of multiple appeals in the same case.[10] The "unified appeal" doctrine would require a full appeal in every criminal case, but would foreclose any collateral attack by post-conviction relief proceedings.

Although the courts of Florida are now disposing of more cases than ever before, they must continue to seek and find new methods to improve our judicial system. The flexibility of the state constitutional provisions[11] on the organization of the judiciary has greatly assisted this state in meeting these new challenges. It is important that everyone, both within and without the judiciary, share the concern for the quality of a much-expanded system of justice. It will take work, cooperation, and funding to solve the problems now facing the courts.

THE JUDICIARY OF THE FUTURE

I am concerned about the future quality of the judiciary. The State of Florida is now losing outstanding judges with twelve to twenty years of experience. In less than three years, numerous judicial officers, including the chief judges of three metropolitan circuits, and the chief judge and the immediate past chief judge of the Fourth District Court of Appeal, have resigned their posts. These judges did not reach retire-

9. Pursuant to § 61.181, Fla. Stat. (1975), the Fourth, Tenth, and Thirteenth Judicial Circuits have appointed administrators.

10. *See generally* P. CARRINGTON, D. MEADOR, AND M. ROSENBERG, JUSTICE ON APPEAL, 110-14 (1976).

11. Art. V, Fla. Const.

ment age. They resigned to re-enter the private practice of law. Florida cannot afford to lose these people and others of their caliber. They are necessary for a strong, independent judiciary of the future.

The judiciary places special restrictions on its officers. A judge is not like a legislator or an executive officer. He cannot be an advocate. Those who come before a judge entrust to him their liberty and property. They demand and deserve dispassionate justice. In doing so, a judge must decide issues in a way which will retain the respect of both sides. It is recognized that judges must have integrity, intelligence, and judicial temperament. Just as important is the need for those seeking judicial positions to be interested in making the judiciary a twenty- or thirty-year career. The judiciary must never be a stepping-stone to a better law practice or a political office in the legislative or executive branches, nor should it be a position of retirement.

Outstanding attorneys will be difficult to obtain for the judiciary in the future because of a loss in the prestige of the office caused by the proliferation of the office and the misconduct of a few. The reduction of prestige is also linked to a judicial officer's compensation.[12] The circuit judge was once the highest paid public official in the community. Now state, county, and municipal funds pay more to law professors, county and assistant county attorneys, city and county managers, superintendents of public instruction, and, in some instances, court clerks. About ten years ago, the compensation of a judge was within reasonable range of that of a good trial lawyer. This is no longer true in many areas of the state. This lack of parity in compensation, when coupled with investment restrictions that are much greater than for other public officials, may well limit the persons who will seek judicial office. Last, but not least, an individual contemplating a judicial career may be concerned about the political uncertainty of the office even though he has been diligent and industrious.

These problems are not insoluble. Obviously, the State cannot compensate judges for the amount many of them could earn practicing law. But compensation on a par with that of other public officials in the community, together with the security of a fully funded retirement plan which offsets investment restrictions, will solve this problem. With reference to specific compensation for the judiciary, it is suggested that a cost-of-living increase or decrease formula be established and thereby

12. The Legislative Committee of the Florida Bar is preparing a report on the inadequacy of judicial salaries.

avoid annual legislative requests for pay increases.[13]

Finally, the merit retention plan, approved by Florida voters on November 2, 1976, will substantially aid restoration of much of the prestige of the office.[14] There are many who are concerned about merit retention and believe that it removes the judge from the people of his community. Merit retention is, in fact, a compromise between the politically elected judge and the judge who is appointed for life. It is a device that takes the judge out of the political sphere but still requires that periodically he be accountable to the people. It is interesting to note that fourteen states[15] now have a merit retention process for at least their court of last resort, and at least ten have no election process whatever.[16] The fact that a judicial officer will be selected on merit and retained on merit will substantially enhance the prestige of the office in the eyes of those who may seek the office as well as in the eyes of the public.

CITIZEN EDUCATION

To most Americans, the law is a strange realm shrouded in mystery, presided over by awesome figures speaking in an arcane language, unintelligible to the average person. Knowledge of how our government, and particularly our judicial system, work is extremely important to our self-government. If a person does not understand the system of justice, it is difficult for him to respect it. But ignorance of the judicial system and its place in our society costs us more than just the loss of a citizen's respect. The system is effective only to the extent that people intelligently use it to their advantage and voluntarily comply with its restrictions. Those acting on misconceived notions of the law brought about

13. California increases the salaries of its justices in proportion to increases in the California price index. CAL. GOV'T. CODE § 68203 (West).

14. *See generally* AMERICAN JUDICATURE SOCIETY, JUDICIAL SELECTION AND TENURE: SELECTED READINGS (G. Winters ed. 1967). *See also* Garwood, *Judicial Revision—An Argument for the Merit Plan for Judicial Selection*, 5 TEX. TECH. L. REV. 1 (1973); FLORIDA BAR, MERIT RETENTION OF JUDGES HANDBOOK (1976).

15. These states include the following: Alaska, Arizona, Colorado, Illinois, Indiana, Iowa, Kansas, Missouri, Nebraska, Oklahoma, Pennsylvania, Utah, Vermont, and Wyoming. *See generally* FLORIDA BAR, MERIT RETENTION OF JUDGES HANDBOOK (1976).

16. These states include the following: Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, Rhode Island, South Carolina, Vermont, and Virginia. In New Hampshire, judges are initially elected, but serve during good behavior. In Vermont, there is constitutional merit retention for all judges, but it is the legislature that passes on the judges, not the electorate.

by their ignorance become discontent; as a result, their potential contribution to our society is lost.

The legal profession has done little to convey to the ordinary citizen an understanding of how the judicial system operates and how it can help the individual. That responsibility has been left to anyone who will take it. No one really has. A social studies textbook used in Florida public schools, for example, contains less than ten pages about our judicial system. Is it surprising then, in light of their lack of knowledge, that our youth are cynical about the law and distrust those who administer it?

Today's student is restless and independent and wants to be involved with real problems relevant to his world. Why not teach him how the judicial system deals with those problems? A high school graduate should know his obligations under the law, how to legally protect himself when he buys a house or car, what to do when there is a death in the family, what is required of him as a witness or a juror, what his rights are if he is charged with a criminal offense, and when to seek legal assistance.

A number of states are attempting to educate students and the public about how our system of justice operates.[17] I recently requested the Young Lawyers Section of the Florida Bar to develop, in cooperation with the Supreme Court and the Department of Education, written educational materials on this subject. The Section accepted this responsibility. This, however, is only a first step. We need the participation of the entire legal profession, not only in the development of these educational materials, but in aiding teachers in instructing students and conveying the same information to the community itself. Increased knowledge will come with increased understanding and respect for the law. It also should produce knowledgeable citizen support to improve and fund a system of justice that can properly absorb all new matters and dispose of them with high quality judicial officers. These are some of the problems our judiciary faces now and in the near future. To solve them, there

17. In its booklet entitled *Law*, the Law in American Society Foundation-National Center for Law-Focused Education (33 North LaSalle Street, Chicago, Illinois 60602) reports ongoing projects in Alabama, Arizona, Colorado, Illinois, Indiana, Iowa, Massachusetts, Michigan, Minnesota, Mississippi, Washington, and the District of Columbia. The materials produced by the Foundation include the *Justice in America, Justice in Urban America,* and *Trailmarks of Liberty* series. Also, the Conference of California Judges has produced a public information and education program called *Project Benchmark,* and the Wisconsin Bar Foundation has developed an educational program for high school students called *Inquiry.*

must be full recognition of the existence of our problems and active participation and interest by both the legal profession and the individual citizen.